

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>BEN AND EVELYN SLOTKIS</b>	:	DETERMINATION
	:	DTA NO. 817952
for Redetermination of a Deficiency or for Refund of	:	
of Personal Income Tax under Article 22 of the Tax	:	
Law for the Year 1997.	:	

---

Petitioners, Ben and Evelyn Slotkis, 151 East 31<sup>st</sup> Street, #23H, New York, New York 10016, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1997.

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on April 12, 2001 at 10:30 A.M., with all briefs to be submitted by September 14, 2001, which date began the six-month period for the issuance of this determination. Petitioners appeared by Norma Hack, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel).

***ISSUE***

Whether the Division of Taxation properly determined that petitioners were domiciliaries of New York State for the year at issue and were, therefore, taxable as resident individuals.

***FINDINGS OF FACT***

1. For the year 1997 petitioners, Ben and Evelyn Slotkis, filed a New York State Resident Income Tax Return, Form IT-201, dated May 11, 1998. Accompanying the return was an Application for Automatic Extension of Time to File for Individuals, Form IT-370, which extended the due date for their return to August 15, 1998. Petitioners indicated as their address “9599 Weldon Circle, Tamarac, FL 33321,” and their New York County of Residence to be “Kings.”

2. On July 6, 1998, petitioners filed a Nonresident and Part-Year Resident Income Tax Return, Form IT-203, and an Amended Nonresident and Part-Year Resident Return, Form IT-203X, both dated June 12, 1998, which indicated a change of resident status to Florida as of January 1, 1997, and requesting a refund of \$5,297.00. Following a review of additional information requested by and sent to the Division of Taxation (“Division”) by petitioners, the Division issued to petitioners a Notice of Disallowance of the refund claim on May 7, 1999.

3. Prior to the year at issue, petitioners resided in a home located at 701 Gerald Court, Brooklyn, New York, purchased by petitioners in 1954. The home consisted of three bedrooms and a bath, and it is where petitioners raised their four children. During the year at issue, petitioners’ son and family resided in North Carolina, while their three daughters, grandchildren and great grandchildren lived in the New York metropolitan area. One of petitioners’ daughters testified at the hearing that petitioners had few hobbies and that the grandchildren were “their sole source of pleasure.”

4. Sometime during the year 1967, Mr. Slotkis purchased a large hardware store in Brooklyn, New York. In 1993 he sold the business, but maintained a leasehold on the property

in which the business was located. Besides the hardware store, there were four residential units in the building, and Mr. Slotkis was actively involved in the management of the property.

5. In 1983, petitioners had purchased an apartment in Margate, Florida, and over the years would travel to Florida and return to New York approximately three to five times a year. When Mr. Slotkis retired from the hardware business in 1993, their children began to encourage petitioners to stop their practice of making frequent trips back and forth between Florida and New York and to relocate to Florida on a permanent basis. By the end of 1995, petitioners became convinced of the desirability of living in Florida and the health and safety risks that existed for them during the winter months in New York. On October 5, 1995, petitioners purchased a two-bedroom, two-bathroom condominium located at 9599 Weldon Circle, # 310, Tamarac, Florida, in a community where Mrs. Slotkis's sister and several cousins of Mr. Slotkis lived. The cost of the condominium unit was \$89,990.00 and the unit was fully furnished with new furniture.

6. Petitioners spent approximately one month in the new condominium from the middle of November through the middle of December 1995 before returning to New York. Shortly after returning, Mrs. Slotkis suffered a major stroke, requiring hospitalization and a stay in a rehabilitation facility for six months, followed by confinement in the Brooklyn home for an additional six months while participating in physical and occupational therapy. In November 1996, Mrs. Slotkis was well enough to make the trip to Florida, and petitioners remained there until April 16, 1997, when they returned to New York. While in Florida, Mrs. Slotkis was cared for by a full-time, round-the-clock health aide who had cared for her during the many months of rehabilitation and therapy in New York. Petitioners remained in New York until their return to Florida on September 9, 1997.

7. In September 1996, Ben Slotkis put the building in which the hardware store was located on the market in an effort to sell it. The tenant in the hardware store exercised its option of first refusal, a contract of sale was executed and the sale closed on April 8, 1997.

8. Ben and Evelyn Slotkis filed voter registration cards in Florida on January 22 and 24, 1997, respectively. Mr. Slotkis obtained a Florida driver's license on January 21, 1997, and Mrs. Slotkis obtained a motor vehicle identification card on February 13, 1997. Petitioners filed in Florida for an exemption from ad valorem tax on January 30, 1997 and a homestead exemption on March 12, 1997. On March 7, 1997, they executed new wills, revocable trust agreements, a durable power of attorney for Mrs. Slotkis and health care surrogate designations using their Florida address. Their US Individual Income Tax Return, Form 1040, for the year 1997 was filed using their Florida address.

9. During the year at issue, petitioners spent 217 days in Florida and 148 days in New York. Most of the time spent in New York occurred between the dates of April 16 and September 9. In 1995, the year prior to Mrs. Slotkis's stroke, petitioners spent approximately six months in New York, most of which occurred between May 3 and November 16.

### ***CONCLUSIONS OF LAW***

A. Tax Law § 605(b)(1) defines a resident individual as follows:

Resident individual. A resident individual means an individual:

(A) who is domiciled in this state, unless (i) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state . . . or

(B) who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than one hundred eighty-three days of the taxable year in this state, unless such individual is in active service in the armed forces of the United States.

B. While the Tax Law does not contain a definition of “domicile,” a definition is provided in the Division’s regulations (20 NYCRR 105.20[d]) which states as follows:

*Domicile.* (1) Domicile, in general, is the place which an individual intends to be such individual’s permanent home - - the place to which such individual intends to return whenever such individual may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making such individual’s fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of such individual’s former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed. In determining an individual’s intention in this regard, such individual’s declarations will be given due weight, but they will not be conclusive if they are contradicted by such individual’s conduct. The fact that a person registers and votes in one place is important but not necessarily conclusive, especially if the facts indicated that such individual did this merely to escape taxation.

\* \* \*

(4) A person can have only one domicile. If such person has two or more homes, such person’s domicile is the one which such person regards and uses as such person’s permanent home. In determining such person’s intentions in this matter, the length of time customarily spent at each location is important but not necessarily conclusive. It should be noted however, as provided by paragraph (2) of subdivision (a) of this section, a person who maintains a permanent place of abode for substantially all of the taxable year in New York State and spends more than 183 days of the taxable year in New York State is taxable as a resident even though such person may be domiciled elsewhere.

C. The distinction between domicile and residency was explained many years ago by the Court of Appeals in *Matter of Newcomb’s Estate* (192 NY 238, 250):

Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one’s domicile.

It is well established that an existing domicile continues until a new one is acquired and the burden of proof to show a change in domicile rests upon the party alleging the change (*id*).

Whether there has been a change of domicile is a question “of fact rather than law, and it

frequently depends upon a variety of circumstances which differ as widely as the peculiarities of individuals” (*id.* at 250). It is frequently stated that the test of intent with regard to a purported new domicile is “whether the place of habitation is the permanent home of a person, with the range of sentiment, feeling and permanent association with it” (*Matter of Bourne*, 181 Misc 238, 41 NYS2d 336, 343, *affd* 267 App Div 876, 47 NYS2d 134, *affd* 293 NY 785; *see, Matter of Bodfish v. Gallman*, 50 AD2d 457, 378 NYS2d 138). Moves to other locations in which permanent residences are established do not necessarily provide clear and convincing evidence of an intent to change one’s domicile (*Matter of Zinn v. Tully*, 54 NY2d 713, 442 NYS2d 990).

While the standard is subjective, the courts and the Tax Appeals Tribunal have consistently looked to certain objective criteria to determine whether a taxpayer’s general habits of living demonstrate a change of domicile. Among the factors that have been considered are: (1) the retention of a permanent place of abode in New York (*see, e.g., Gray v. Tax Appeals Tribunal*, 235 AD2d 641, 651 NYS2d 740 *confirming Matter of Gray*, Tax Appeals Tribunal, May 25, 1995; *Matter of Silverman*, Tax Appeals Tribunal, June 8, 1989); (2) continued business activity in New York (*Matter of Erdman*, Tax Appeals Tribunal, April 6, 1995; *Matter of Angelico*, Tax Appeals Tribunal, March 31, 1994); (3) family ties in New York (*Matter of Gray, supra*; *Matter of Buzzard*, Tax Appeals Tribunal, February 18, 1993, *confirmed* 205 AD2d 852, 613 NYS2d 294); (4) continuing social and community ties in New York (*Matter of Getz*, Tax Appeals Tribunal, June 10, 1993); and (5) formal declarations of domicile (*Matter of Trowbridge*, 266 NY 283, 289; *Matter of Gray, supra*; *Matter of Getz, supra*).

D. In the present matter, petitioners obtained a Florida driver’s license and a motor vehicle identification card, registered to vote in Florida, filed homestead exemption and exemption from ad valorem tax in Florida, executed new wills with their Florida address and

filed their income tax returns using the Florida address. In reviewing the acts of a taxpayer alleging a change in domicile, formal declarations have been held to be “less persuasive than the informal acts of an individual’s general habit of life” (*Matter of Silverman, supra, citing Matter of Trowbridge, supra*).

There is no indication in the record that petitioners intended to sever their New York ties or that they possessed the requisite intent to make Florida their fixed and permanent home. Three of their four children as well as grandchildren and great grandchildren resided in the New York metropolitan area. Their grandchildren were described as “their sole source of pleasure.” Petitioners retained their home in Brooklyn, New York. They intended to keep this home to use during their visits to New York, especially during the spring and summer months when they felt it was too hot in Florida. Petitioners spent 148 days in New York during 1997, the vast majority of those between April and September. This was only a minor change in their travel patterns from the year 1995, the year prior to Mrs. Slotkis’s stroke, in which they spent approximately six months in New York during the spring, summer and autumn months at a time when they still considered themselves domiciled in New York.

Petitioners did not take any of their furniture from their Brooklyn house to Florida, as they intended to continue to use this home during their stays in New York. This is a strong factor in deciding that they did not intend to give up their New York domicile and make the Florida condominium their permanent home.

In summary, petitioners’ declaration of a Florida domicile is undermined by their general habit of life in which New York remained their permanent home. The continued maintenance of their Brooklyn home, the large amount of time spent in New York during the year, the lack of any significant change in their travel schedules before and after they claim to have changed their

domicile and the importance of being with their family in New York all serve to negate an intent to give up their New York domicile or to acquire a new domicile in Florida. Accordingly, it must be found that petitioners continued to be domiciled in New York during the year 1997.

E. The petition of Ben and Evelyn Slotkis is denied and the Notice of Disallowance of Refund issued by the Division of Taxation on May 7, 1999 is sustained.

DATED: Troy, New York  
March 7, 2002

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE